

[4810-22-M]

Title 19—Customs Duties

CHAPTER I—UNITED STATES
CUSTOMS SERVICE

[T.D. 78-448]

**PART 158—RELIEF FROM DUTIES ON
MERCHANDISE LOST, DAMAGED,
ABANDONED, OR EXPORTED**

**Granting Allowance for Losses to Im-
ported Merchandise Caused by
Natural Force or Leakage**

AGENCY: United States Customs
Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by granting relief from the payment of Customs duties for losses to imported merchandise caused by a natural force such as evaporation or by leakage. An allowance is presently made in the assessment of duties for lost or missing packages, or deficiencies in the contents of packages, and the Customs Service has determined that a similar allowance in the assessment of duties for losses caused by a natural force or by leakage should be granted.

EFFECTIVE DATE: November 17, 1978.

**FOR FURTHER INFORMATION
CONTACT:**

Benjamin H. Mahoney, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5778.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Part 158 of the Customs Regulations (19 CFR Part 158) sets forth general rules for granting relief from Customs duties on imported merchandise which has been lost, damaged, abandoned, or exported. Although an allowance is made in the assessment of duties for lost or missing packages, or deficiencies in the contents of packages, no similar provision is made for an allowance in duties for losses to imported merchandise caused by a natural force such as evaporation or by leakage. The Customs Service has determined that such an allowance is advisable and that the Customs Regulations should be amended to grant an allowance in the assessment of duties where losses are caused by a natural force or by leakage.

Inasmuch as this amendment grants an allowance not presently provided and places no affirmative duty on the

public, notice and public procedure are found to be unnecessary, and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

DRAFTING INFORMATION

The principal author of this document was Todd J. Schneider, Regulations and Legal Publications Division of the Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices of the Customs Service participated in its development.

AMENDMENT TO CUSTOMS REGULATIONS

Part 158 of the Customs Regulations (19 CFR Part 158) is amended by adding a new section 158.7 to read as follows:

§ 158.7 Allowance for reduction or loss of merchandise by a natural force or by leakage.

Merchandise subject to ad valorem, specific, or compound rates of duty found at the time of importation to be reduced or diminished by a natural force, such as evaporation, or by leakage, shall be appraised in its condition as imported, with an allowance made in the value, weight, quantity, or measure to the extent of the reduction or loss, except when forbidden by law or regulation.

(R.S. 251, as amended, sec. 499, sec. 624, 46 Stat. 728, as amended, 759 (19 U.S.C. 66, 1499, 1624).)

LEONARD LEHMAN,
Commissioner of Customs.

Approved: November 3, 1978.

RICHARD J. DAVIS,
*Assistant Secretary
of the Treasury.*

[FR Doc. 78-32392 Filed 11-16-78; 8:45 am]

[4110-07-M]

Title 20—Employee's Benefits

**CHAPTER III—SOCIAL SECURITY AD-
MINISTRATION, DEPARTMENT OF
HEALTH, EDUCATION, AND WEL-
FARE**

[Reg. No. 4]

**PART 404—FEDERAL OLD-AGE, SUR-
VIVORS, AND DISABILITY INSUR-
ANCE (1950)**

The Retirement Test

AGENCY: Social Security Administration, HEW.

ACTION: Interim regulations.

SUMMARY: The Social Security Amendments of 1977: (1) Eliminate

the monthly earnings test beginning with monthly benefits payable January 1978, except for a one-time application of the test to each type of social security benefit; (2) raise the annual earnings limitation amount for individuals age 65 and over, beginning with taxable years ending after 1977; and (3) lower the age from 72 to 70 at which there is no longer an annual earnings limitation, beginning with taxable years ending after 1981.

These interim regulations explain the changes made by the amendments and clarify the effects of the statute. Because the amendments to the monthly earnings test and the annual earnings amount for people aged 65 and over are, under the terms of the statute, already in effect, we are now using some of the rules explained in this regulation. The rules may, however, be changed in light of the comments we receive.

DATES: Effective date: November 17, 1978. You will be given an opportunity to comment on the interim regulations. Your comments will be considered if we receive them no later than January 16, 1978.

ADDRESSES: Send your written comments to: Social Security Administration, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Md. 21203.

Copies of all comments we receive can be seen at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 5131, 330 Independence Avenue SW., Washington, D.C. 20201.

**FOR FURTHER INFORMATION
CONTACT:**

Clara B. Powell, Legal Assistant, Division of Regulations, Office of Policy and Regulations, Office of Program Policy and Planning, Social Security Administration, Baltimore, Md. 21235, 301-594-7459. Ms. Powell will respond to questions, but all comments must be submitted in writing.

SUPPLEMENTARY INFORMATION:

**ELIMINATION OF THE MONTHLY
EARNINGS TEST**

Before the passage of the Social Security Amendments of 1977 (Pub. L. 95-216), two tests were used to compute the benefits payable to social security beneficiaries who continued to work while entitled to benefits. These were the annual earnings test and the monthly earnings test. Under the annual earnings test, the yearly benefits payable to an individual were reduced \$1 for each \$2 of income earned during the course of a taxable year above the annual earnings limitation

amount established for that year. Deductions were made beginning with the first month of the taxable year in which benefits were payable to the individual.

However, before the individual's monthly benefits were reduced, the monthly earnings test was applied. Under the monthly test, no matter how much money the beneficiary earned for the year as a whole, no benefits could be deducted for any month in the taxable year during which the beneficiary earned wages less than or equal to the monthly earnings limitation amount established for that year (which, in most cases, is $\frac{1}{2}$ of the annual earnings limitation amount for that year) and did not perform substantial services in self-employment. These months are referred to as "nonservice" months.

One consequence of the monthly earnings test was that beneficiaries who earned the same amount of money in a given year received different benefits for that year simply because they earned their money in different ways. Consider, for example, two self-employed beneficiaries. One earned \$15,000 for the year, but only worked 3 months. Full monthly benefits were paid this individual for the 9 nonservice months, under the monthly earnings test. The second beneficiary also earned \$15,000, but worked regularly throughout the year. Since the beneficiary had no nonservice months, the monthly test did not apply; under the annual test, no benefits at all were paid to this beneficiary.

The Social Security Amendments of 1977 correct the unfairness of paying different benefits to beneficiaries who earn the same amount of money in a given year, simply because they earn their money in different ways. Beginning with benefits payable for January 1978, the monthly test is eliminated (except as explained below) and the benefits payable to a beneficiary will be reduced \$1 for each \$2 of his or her annual earnings above the annual earnings limitation amount, no matter how many nonservice months the beneficiary might have during the year.

The monthly earnings test will continue to apply, however, in the first year a beneficiary, while entitled to benefits, has a nonservice month. This year when the monthly test applies to a beneficiary is called the grace year. In most cases, the grace year will be the beneficiary's actual year of retirement. Applying the monthly test in the beneficiary's year of retirement means that benefits can be paid beginning with the first month of retirement regardless of how much money the beneficiary earned in the months preceding retirement.

Also, the monthly test can apply in more than 1 grace year to any given

beneficiary if the beneficiary's entitlement to one type of benefit ends, and, after a break in entitlement of at least 1 month, the beneficiary becomes entitled to a different type of benefit. The monthly test would then apply in the first year that the beneficiary, while entitled to this new type of benefit, has a nonservice month.

It should be noted that, under the Social Security Act, no benefit deductions are made because of excess annual earnings earned by persons receiving benefits as disability beneficiaries under section 223 of the Act and as disabled widows, widowers, and children under section 202. Since the annual earnings test does not apply to these beneficiaries, the monthly earnings test does not apply to them either. As a result, no nonservice month incurred by any person while entitled to a disability benefit as a widow, widower, or child, or under section 223, will be counted in determining whether any given year is the beneficiary's grace year in which the monthly earnings test can apply.

As mentioned earlier, the elimination of the monthly earnings test except for the beneficiary's grace year is effective beginning with monthly benefits payable for January 1978. This means that beneficiaries who, while entitled to benefits, had a nonservice month in a taxable year ending prior to 1978 cannot have the monthly test applied to them in 1978 or thereafter, unless, as explained above, they become (or have become) entitled to a different type of benefit than before, after a break in entitlement of at least 1 month. On the other hand, since only benefits payable beginning January 1978 are affected by the amendment, no beneficiary has been overpaid because the monthly test was applied to him or her in more than 1 year prior to 1978. Because there was a delay in implementing the change in the monthly earnings test until May 1978, HEW has adopted a waiver policy for those net overpayments outstanding at the end of this year which result from erroneous application of the monthly earnings test for January through May 1978.

ANNUAL EXEMPT AMOUNT FOR BENEFICIARIES AGE 65 AND OLDER

Another provision of the Social Security Amendments of 1977 increases the annual earnings limitation amount for beneficiaries age 65 and older above the amount for beneficiaries below age 65. In the past, the exempt amount was the same for all beneficiaries. This provision is effective for all months of any taxable year ending after December 1977.

AGE AT WHICH RETIREMENT TEST NO LONGER APPLIES

The age at which the retirement test no longer applies is reduced from 72 to 70. This provision is effective for all months of any taxable year ending after December 1981. We are including this provision now so that beneficiaries making long-range retirement plans will know what rules will apply to them in 1982.

We find that publication of a notice of proposed rulemaking is impracticable and contrary to the public interest because two of the statutory provisions, the elimination of the monthly earnings test and the increase in the annual earnings limitation amount for beneficiaries age 65 and over are, under the terms of the statute, already effective and rules are needed to assure uniform implementation of these provisions. Furthermore, publication of a notice of proposed rulemaking to implement the reduction in the age at which the retirement tests no longer apply from 72 to 70 is unnecessary because this amendment is self-executing and leaves nothing to the discretion of the Secretary.

(Secs. 203 and 1102 of the Social Security Act as amended; 49 Stat. 623, as amended, 49 Stat. 647, as amended (42 U.S.C. 403 and 1302); Pub. L. 95-216.)

(Catalog of Federal Domestic Assistance Program Nos. 13.803, Social Security Retirement Insurance and 13.805, Social Security Survivors Insurance.)

Dated: August 11, 1978.

DON WORTMAN,
Acting Commissioner of
Social Security.

Approved: November 11, 1978.

HALE CHAMPION,
Acting Secretary of Health,
Education, and Welfare.

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. Section 404.428(a) is revised to read as follows:

§ 404.428 Earnings in a taxable year.

(a) *General.* (1) In applying the annual earnings test (see § 404.415(a)) under this subpart, all of a beneficiary's earnings (as defined in § 404.429) for all months of the beneficiary's taxable year are used even though the individual may not be entitled to benefits during all months of the taxable year. (See, however, § 404.430 for the rule which applies to earnings of beneficiaries who turn age 72 during the taxable year (age 70 for all months of any taxable year ending after December 1981).)

(2) The taxable year of an employee is presumed to be a calendar year until it is shown to the satisfaction of the Social Security Administration that

the individual has a different taxable year. A self-employed individual's taxable year is a calendar year unless the individual has a different taxable year for the purposes of subtitle A of the Internal Revenue Code of 1954. In either case, the number of months in a taxable year is not affected by: (i) The time a claim for social security benefits is filed, (ii) attainment of any particular age, (iii) marriage or the termination of marriage, or (iv) adoption. A taxable year ends with the death of the beneficiary. The month of death is counted as a month of the deceased beneficiary's taxable year in determining whether the beneficiary had excess earnings for the year under § 404.430.

2. Section 404.430 is amended as follows:

The section heading is revised; paragraph (a)(3) and (b) are revised; in paragraph (c)(1) the material preceding paragraph (c)(1)(i) is revised; and a new paragraph (d) is added to read as follows:

§ 404.430 Excess earnings; defined for taxable years ending after December 1972; monthly earnings amount; defined.

(a) *Method of determining excess earnings for years ending after December 1972.* For taxable years ending after 1972, an individual's excess earnings for a taxable year are 50 percent of his or her earnings (as described in § 404.429) for the year which are in excess of the product obtained by multiplying the number of months in that taxable year by the following applicable monthly exempt amount:

- (1) * * *
- (2) * * *

(3) the exempt amount for taxable years ending after December 1974, as determined under paragraphs (c) and (d) of this section. However, earnings in and after the month an individual turns age 72 will not be used to figure excess earnings for retirement test purposes. For the employed individual, wages for months prior to the month of attainment of age 72 are used to figure the excess earnings for retirement test purposes. For the self-employed individual, the pro rata share of the net earnings or net loss for the taxable year for the period prior to the month of attainment of age 72 is used to figure the excess earnings. If the beneficiary was not engaged in self-employment prior to the month of attainment of age 72, any subsequent earnings or losses from self-employment in the taxable year will not be used to figure the excess earnings. Where the excess amount figured under the provisions of this section is not a multiple of \$1, it is reduced to the next lower dollar. (All references to age 72 will be age 70 for all months

of taxable years ending after December 1981.)

Example 1. The self-employed beneficiary turned age 72 in July 1975. His net earnings for 1975, his taxable year, were \$6,000. The pro rata share of the net earnings for the period prior to July is \$3,000. His excess earnings for 1975 for retirement test purposes are \$240. This is computed by subtracting \$2,520 ($\210×12), the exempt amount for 1975, from \$3,000 and dividing the result by 2.

Example 2. The beneficiary turned age 72 in July 1975. His wages for the period prior to July were \$3,000. From August through December 1975 he worked in self-employment and had net earnings in the amount of \$2,000. His net earnings from self-employment are not used to figure his excess earnings. Only his wages for the period prior to July 1975 (\$3,000) are used to figure his excess earnings. As in example 1, his excess earnings are \$240.

Example 3. The facts are the same as in example 2 except that the beneficiary worked in self-employment throughout all of 1975, and had a net loss of \$500 from the self-employment activity. The pro rata share of the net loss for the period prior to July is \$250. His earnings for the taxable year to be used in figuring excess earnings are \$2,750.

This is computed by subtracting the \$250 net loss from self-employment from the \$3,000 in wages. The excess earnings are \$115 ($(\$2,750 - \$2,520) \div 2$).

(b) *Definition.* The retirement test monthly exempt amount is the amount of wages which a social security beneficiary may earn in any month without part of his or her monthly benefit being deducted because of excess earnings. For taxable years ending after 1977, the monthly exempt amount applies only in a beneficiary's grace year or years. (See § 404.435(a).)

(c) *Method of determining monthly exempt amount for taxable years ending after December 1974.* (1) Except as provided under paragraph (d) of this section, for purposes of paragraph (a)(3) of this section, the applicable monthly exempt amount effective for an individual's taxable year that ends in the calendar year after the calendar year in which an automatic cost-of-living increase in old-age, survivors, and disability insurance benefits is effective is the larger of:

(d) *Method of determining monthly exempt amount for taxable years ending after December 1977 for beneficiaries age 65 or over.* (1) For purposes of paragraph (a)(3) of this section, for all months of taxable years ending after 1977, the applicable monthly exempt amounts for individuals who have reached the age of 65 before the close of the taxable year involved are:

- (i) \$333.33 $\frac{1}{3}$ for each month of any taxable year ending in 1978;
- (ii) \$375 for each month of any taxable year ending in 1979;
- (iii) \$416.66 $\frac{2}{3}$ for each month of any taxable year ending in 1980;

(iv) \$458.33 $\frac{1}{3}$ for each month of any taxable year ending in 1981; and

(v) \$500 for each month of any taxable year ending in 1982.

(2) Fractional amounts listed in paragraph (d)(1) of this section shall be rounded to the next higher whole dollar amount, unless the individual shows that doing so results in a different grace year (see § 404.435 (a) and (c)).

3. Section 404.435 is revised to read as follows:

§ 404.435 Excess earnings; months to which excess earnings cannot be charged.

(a) *Monthly benefits payable beginning with January 1978.* Beginning with monthly benefits payable for January 1978, no matter how much a beneficiary earns in a given taxable year, no deduction on account of excess earnings will be made in the benefits payable for any month: (1) In which he or she was not entitled to a monthly benefit; (2) in which he or she was considered not entitled to benefits (due to noncovered work outside the United States, no child in care, or refusal of rehabilitation, as described in § 404.436); (3) in which he or she was age 72 or over (age 70 for taxable years ending after 1981); (4) in which he or she was entitled to payment of a disability insurance benefit; (5) in which he or she was age 18 or over and entitled to a child's insurance benefit based on disability; (6) in which he or she was entitled to a widow's or widower's insurance benefit based on disability; or (7) which was a "nonservice" month (see paragraph (b) of this section) in the beneficiary's "grace year" (see paragraph (c) of this section).

(b) *Nonservice month; defined.* A nonservice month is any month in which an individual, while entitled to retirement or survivors benefits (1) does not work in self-employment (see paragraphs (d) and (e) of this section), (2) does not earn wages greater than the monthly exempt amount set for that month (see paragraph (f) of this section and § 404.430 (b), (c), and (d)), and (3) does not work in noncovered remunerative activity on 7 or more days in a month while outside the United States. A nonservice month occurs even if there are no excess earnings in the year.

(c) *Grace year; defined.* (1) a beneficiary's first grace year is the taxable year in which the beneficiary is for the first time both entitled to a retirement or survivors benefit and has a nonservice month (see paragraph (b) of this section); (2) A beneficiary may have another grace year each time his or her entitlement to one type of benefit ends and, after a break in entitlement of at least 1 month, he or she be-

comes entitled to a different type of retirement or survivors benefit. The new grace year would then be the first taxable year in which the beneficiary, while entitled to this new type of benefit, has a nonservice month; (3) A month will not be counted as nonservice month for purposes of determining whether a given year is a beneficiary's grace year if the nonservice month occurred while the beneficiary was entitled to disability benefits under section 223 of the Social Security Act or as a disabled widow, widower, or child under section 202.

Example 1: Don, age 65, will retire from his regular job in April of next year. Although he will have earned \$11,000 for January-April of that year and plans to work parttime, he will not earn over the monthly exempt amount after April. Since next year will be the first year in which he is both entitled to benefits and has a nonservice month, it will be his grace year and he will be entitled to the monthly earnings test for that year only. He will receive benefits for all months in which he does not earn over the monthly exempt amount (May-December) even though his earnings have substantially exceeded the annual exempt amount. However, in the years which follow, only the annual earnings test will be applied if he has earnings that exceed the annual exempt amount, regardless of his monthly earnings.

Example 2: Marion, age 58, has been entitled to mother's insurance benefits since 1976 because she has had a child in her care who is under age 18. Marion is a seasonal worker who does not work during the summer. Her salary of \$20,000 a year is enough so that all her monthly benefits could have been withheld each year because of excess earnings under the annual earnings test. However, she received full benefits for the summer months of 1976 and 1977 because these were nonservice months under the monthly earnings test. Marion will not receive benefits for these nonservice summer months in 1978 because they do not occur during her grace year. The reason is that 1978 is not the first year in which Marion, while entitled to mother's benefits, had a nonservice month.

Marion's child turns age 18 in May 1979 and, as a result, Marion's entitlement to mother's benefits ends as of April 1979. Marion becomes age 60 in February 1980 and retires in June 1980. She applies for and becomes entitled to widow's insurance benefits in July 1980. Because there was a break in entitlement to benefits of at least 1 month before entitlement to another type of benefit, 1980 is also a grace year for Marion because it is the first year in which she has a nonservice month while entitled to this new type of benefit.

(d) *When an individual works in self-employment.* An individual works in self-employment in any month in which he or she performs substantial services (see § 404.446) in the operation of a trade or business (or in a combination of trades and businesses if there is more than one) as an owner or partner even though there may be no earnings or net earnings caused by the individual's services during the month.

(e) *Presumption regarding work in self-employment.* An individual is presumed to have worked in self-employment in each month of the individual's taxable year until it is shown to the satisfaction of the Social Security Administration that in a particular month the individual did not perform substantial services (see § 404.446(c)) in any trade or business (or in a combination of trades and businesses if there are more than one) from which the net income or loss is included in computing the individual's annual earnings (see § 404.429).

(f) *Presumption regarding earning of wages.* An individual is presumed to have earned wages (as defined in § 404.429) in any given month of more than the applicable monthly exempt amount set for that month until it is shown to the satisfaction of the Social Security Administration that the individual did not earn wages in the month of more than the monthly exempt amount.

[FR Doc. 78-32413 Filed 11-16-78; 8:45 am]

[4110-03-M]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Subpart B—Specific New Animal Drugs For Use In Animal Feeds

AMPROLIUM AND BACITRACIN ZINC

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: This document amends the regulations to codify a prior approval held by IMC Chemical Group, Inc., for use of amprolium and bacitracin zinc in chicken and turkey feed.

EFFECTIVE DATE: November 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Lonnie W. Luther, Bureau of Veterinary Medicine (HFV-147), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: IMC Chemical Group, Inc., Terre Haute, Ind. 47808, holds a prior approval for use of amprolium at 113.5 to 227 grams per ton (0.0125 percent to 0.025 percent) in combination with bacitracin zinc at 4 to 50 grams per ton for use in broiler chickens, replacement chickens, and turkeys.

This document reflects a previous approval and neither requires reevaluation of the basic data submitted nor constitutes a reaffirmation of the drug's safety and effectiveness. Since the approval was granted before July 1, 1975, a summary of the safety and effectiveness data and information submitted in accordance with § 514.11 (e)(2)(ii) (21 CFR 514.11(e)(2)(ii)) is not required to be filed with the Hearing Clerk, Food and Drug Administration.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.55 by amending paragraph (e)(2) in the table by revising the entry under the "Limitations" column and adding a new entry under the "Sponsor" column for subitem "Bacitracin 4 to 50" following item (iv), as follows:

§ 558.55 Amprolium.

* * *

(e) * * *

(2) * * *

Amprolium in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(iv) * * *	Bacitracin 4 to 50.....	1. * * *	As bacitracin methylene disal-	Bacitracin zinc by No. 012769
		2. * * *	cylate or bacitracin zinc.	in § 510.600(c) of this chap-
		do.....	ter.
				Do.

Effective date: This regulation is effective November 17, 1978.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: November 8, 1978.

LESTER M. CRAWFORD,
Director, Bureau of Veterinary Medicine.

[FR Doc. 78-32028 Filed 11-16-78; 8:45 am]

[4910-22-M]

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER G—ENGINEERING AND TRAFFIC OPERATIONS

[FHWA Docket No. 78-35]

PART 635—CONSTRUCTION AND MAINTENANCE

Buy American Requirements

AGENCY: Federal Highway Administration, DOT.

ACTION: Final rule.

SUMMARY: This emergency regulation implements procedures required under section 401 of the Surface Transportation Assistance Act of 1978 (Act), Buy America provision, which provides, with exceptions, that funds authorized by the Act may not be obligated for highway projects unless materials and supplies are of United States origin.

DATES: This emergency regulation is effective November 6, 1978. Comments must be received on or before January 17, 1979.

ADDRESS: Anyone wishing to submit comments may do so, preferably in triplicate, to FHWA Docket No. 78-35, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Kenneth L. Ziems, Construction and Maintenance Division, 202-426-4847; or Lee J. Burstyn, Office of the Chief Counsel, 202-426-0786, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: On November 6, 1978, the President

signed into law the Surface Transportation Assistance Act of 1978, Pub. L. 95-599, 92 Stat. 2689. The provisions of Section 401, Buy America, are effective immediately and require implementation. Current regulations, 23 CFR 635, subpart D, prescribe procedures relating to product and material selection and use on Federal-aid highway projects, but are contrary to the requirements of the 1978 Act.

The Federal Highway Administrator, Karl S. Bowers, has determined that the required implementation of the new Buy America provision will have a major impact on many highway construction programs of the States. Section 401 allows for a modification in its application when such application would be inconsistent with the public interest. Foreign structural steel has been identified as the only foreign product having a significant nationwide effect on the cost of Federal-aid highway construction projects and its continued unrestricted use is contrary to Section 401 of the Act.

Therefore, the Administrator has determined that this emergency regulation is necessary and consistent with the public interest to provide regulations which will immediately implement the Buy America provision as it relates to the use of structural steel in highway projects. In addition, the Administrator has determined that it would be in the public interest to temporarily waive the provisions of section 401 as it applies to products and materials, other than structural steel, used in highway construction. The issuance of this regulation will allow the Federal Highway Administration to authorize States to proceed with advertising projects without incurring undue delay while awaiting formulation of implementing regulations.

This emergency regulation will allow for the immediate application of section 401 and assure the proper expenditure of Federal funds. In the interim, more extensive procedures may be devised which will fully encompass the policies, objectives, and requirements of the new Buy America provision. The legislation history of this provision indicates that Congress intended

it to be interpreted in the light of the 1933 Buy American Act, 41 U.S.C. 10a-10d, as amended.

A docket for comments has been assigned to this regulation and the public is invited to submit their views and comments. Comments may also address future implementation of the Buy America provisions and revisions to the existing 23 CFR 635 Subpart D. These comments may be utilized in formulating a final regulation on this matter and may address proposed criteria concerning the identification of products and materials covered under the Act and implementing procedures.

In consideration of the foregoing, Part 635, Subpart D of Chapter I, Title 23, Code of Federal Regulations, is amended as follows:

1. The table of sections is amended by adding a new section to read:

Sec.
635.410 Buy America requirements.

2. Section 635.410 is added to read as follows:

§ 635.410 Buy America Requirements.

(a) The provisions of this section shall prevail and be given precedence over any requirements of this subpart which are contrary to this section.

(b) No Federal-aid highway construction project is to be authorized for advertisement or otherwise authorized to proceed unless at least one of the following requirements exist:

(1) The project has a total estimated cost of less than \$450,000;

(2) The project includes no structural steel. Structural steel is defined as shapes, plates, H-piling, and sheet piling;

(3) The project is undertaken pursuant to 23 U.S.C. section 117 and the State's laws, regulations, directives and standards are adequate to accomplish the policies and objectives of § 401 of the Surface Transportation Assistance Act of 1978, Pub. L. 95-599;

(4) The State has in effect standard contract provisions that favor the use of domestic materials and products, including structural steel, to the same or

a greater extent than the provisions here set forth; or

(5) A bidding procedure described as follows is used. A separate bid item is to be set up for furnishing structural steel to the project site. For this bid item, bidders are to be given the options of submitting a bid for (i) furnishing domestic structural steel, or (ii) submitting a bid for furnishing domestic steel and a bid for furnishing foreign steel. Bidders are to be advised that the contract will be awarded to the bidder who submits the lowest total bid based on furnishing domestic structural steel unless such total bid exceeds the lowest total bid based on furnishing foreign structural steel by more than 10 percent. The determination of foreign or domestic character is based on place of manufacture, and the origin of more than 50 percent of its components.

(c) Where appropriate, the effective date of application of this section is November 6, 1978.

(23 U.S.C. 315; Sec. 401, Surface Transportation Assistance Act of 1978, Pub. L. 95-599, 92 Stat. 2689; 49 CFR 1.48(b).)

NOTE.—The Federal Highway Administration has determined that this document does contain a significant proposal according to the criteria established by the Department of Transportation pursuant to Executive Order 12044.

Issued on: November 15, 1978.

KARL S. BOWERS,

Federal Highway Administrator.

[FR Doc. 78-32613 Filed 11-16-78; 9:21 am]

[4830-01-M]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

[T.D. 7571]

PART 54—PENSION EXCISE TAX REGULATIONS

PART 141—TEMPORARY EXCISE TAX REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Employee stock ownership plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to employee stock ownership plans ("ESOP's"). Changes in the applicable tax law were made by the Employee Retirement Income Security Act of 1974 (ERISA) and the Tax Reform Act of 1976. These regulations supersede

temporary regulations relating to ESOP's. They are intended to provide guidance for the public in complying with the law. They affect all employees who participate in ESOP's and employers who establish ESOP's.

DATE: The regulations are generally effective for plan years ending after December 31, 1974.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

BACKGROUND

On September 2, 1977, the FEDERAL REGISTER (42 FR 44396) published proposed amendments to the Pension Excise Tax Regulations (26 CFR Part 54). These proposed amendments were adopted as temporary regulations in a Treasury decision published in the same issue of the FEDERAL REGISTER (42 FR 44394).

After consideration of all written comments received regarding the proposed amendments, they are adopted as revised by this Treasury decision. Also, this Treasury decision supersedes the related temporary regulations.

The revisions in the final regulations are clarifying and procedural and do not make substantive changes in the proposed amendments.

The final regulations do not reflect changes made by the Revenue Act of 1978.

CONTINUING LOAN PROVISIONS UNDER PLAN

Comments from the public questioned whether the requirements of § 54.4975-11(a)(3), relating to certain plan provisions, are formal or operational. They also asked whether, if the requirements are formal, the appropriate provisions may be included in the plan by incorporating references to exempt loan provisions under § 54.4975-7(b).

Section 54.4975-11(a)(3) is restructured in the final regulations. Revisions make it clear that the terms of an ESOP must formally provide participants with certain protections and rights relating to exempt loan provisions. The plan terms providing these protections and rights may not simply consist of references incorporating related exempt loan provisions. Remedial plan amendments adopted before December 31, 1979, to provide these protections and rights are retroactively effective to the later of two dates:

(1) The date on which the plan was designated as an ESOP or (2) November 1, 1977.

INTERGRATED PLANS

One comment suggested that the prohibition of integrated ESOP's under § 54.4975-11(a)(7)(ii) should not apply to plans in existence before November 1, 1977, that are designated as ESOP's after that date.

The final regulations do not adopt this suggestion. Instead, they make it clear that the prohibition against integrated ESOP's applies to any plan designated as an ESOP after November 1, 1977. This provision is in accordance with the Report of the Committee of Conference on the Tax Reform Act of 1976 (H.R. Rep. No. 94-1515, 94th Cong., 2d Sess., 541, 542 (1976)).

TEMPORARY REGULATIONS SUPERSEDED

These final regulations supersede substantially identical temporary excise tax regulations. Under § 141.4975-11, the proposed amendments were adopted as temporary regulations until supersession by permanent regulations.

DRAFTING INFORMATION

The principal author of this regulation was Thomas Rogan of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

Accordingly:

§ 141.4975-11 [Deleted].

1. 26 CFR Part 141 is amended by deleting § 141.4975-11.

2. The amendments to 26 CFR Part 54 are hereby adopted subject to the changes set forth below.

PARAGRAPH 1. Paragraph (a)(3) of § 54.4975-11, as set forth in the notice of proposed rulemaking, is changed to read as follows:

§ 54.4975-11 "ESOP" requirements.

(a) In general. * * *

(3) Continuing loan provisions under plan—(i) Creation of protections and rights. The terms of an ESOP must formally provide participants with certain protections and rights with respect to plan assets acquired with the proceeds of an exempt loan. These protections and rights are those referred to in the third sentence of § 54.4975-7(b)(4), relating to put, call, or other options and to buy-sell or similar arrangements, and in § 54.4975-